

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company (U 39 G),

Complainant,

vs.

Calpine Corporation, CPN Pipeline Company;
Calpine Energy Services, L.P., Calpine Natural
Gas Company; Lodi Gas Storage, LLC; and
DOES 1-10,

Defendants.

Case 03-07-031
(Filed July 22, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE
GRANTING PETITION TO INTERVENE**

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling sets forth the procedural schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held before the assigned administrative law judge (ALJ) on October 16, 2003. This ruling also grants the petition of Duke Energy North America to intervene in the proceeding.

Background

Pacific Gas and Electric Company (PG&E) alleges that Lodi Gas Storage (Lodi) is offering Calpine Corporation, CPN Pipeline Company (CPN), Calpine

Energy Services, L.P., Calpine Natural Gas Company (collectively, Calpine Entities) natural gas transportation services. PG&E claims Lodi has a certificate of public convenience and necessity (CPCN) for gas storage services only, and that by offering transportation services Lodi is exceeding the authority the Commission granted it in its CPCN.¹ PG&E claims Lodi has established direct interconnections between the pipeline the Commission authorized it to install as part of its natural gas storage facilities and CPN's supposedly proprietary natural gas pipeline in an attempt to bypass PG&E's natural gas transportation charges.

PG&E claims that portions of the CPN's purported proprietary natural gas pipelines should be treated as public utility services because they are in actuality dedicated to the public use. This is because, according to PG&E, CPN is supplying Lodi-transported natural gas to Chevron Corporation and to its own Calpine affiliates (Calpine's power plants). PG&E claims doing so is enough to transform Calpine into a public utility operating in PG&E's territory. However, claims PG&E, PG&E has a Commission-mandated monopoly on such services in its territory, and Calpine is acting in violation of law by bypassing PG&E's natural gas transportation network. Moreover, PG&E claims, Calpine is evading local transmission and customer access and customer class charges for natural gas consumed in PG&E's service area.

PG&E seeks reparations from both Lodi and the Calpine Entities.

Lodi claims it is furnishing Calpine natural gas storage services in compliance with its CPCN. Calpine claims it is not a public utility, but rather a

¹ Decision (D.) 00-05-048.

private entity using its own proprietary pipeline to deliver natural gas to its own plants after it receives the natural gas out of storage from Lodi. Therefore, both defendants claim, they owe PG&E nothing, as they are not unlawfully bypassing PG&E's natural gas system.

Alternative Dispute Resolution

During the October 16, 2003 PHC, the parties inquired as to the Commission's ability to provide them Alternative Dispute Resolution (ADR) services. The Commission will facilitate any such request by the parties. ADR may include settlement conferences, mediation, or other measures designed to assist the parties in settling their claims in whole or part, their claims.

Prior to the distribution of prepared testimony, the parties shall meet and confer, in good faith, to explore informal settlement of this case. During the October 16, 2003 PHC, the parties inquired as to the Commission's ability to provide them Alternative Dispute Resolution (ADR) services. The Commission will facilitate any such request by the parties. ADR may include settlement conferences, mediation, or other measures designed to assist the parties in settling their claims in whole or part.

Prior to the distribution of prepared testimony, the parties shall meet and confer, in good faith, to explore informal settlement of this case.

Scope of Proceeding

Based upon the pleadings filed to date and the representations of the parties at the PHC, the scope of this proceeding is limited to the following issues:

- Whether the facilities of Calpine Corporation, CPN, Calpine Energy Services, L.P., Calpine Natural Gas Company, or Lodi identified in the complaint constitute facilities for the transportation rather than storage of natural gas;

- Whether Lodi violated the terms of its CPCN or Commission-approved tariff by offering transportation rather than storage of natural gas;
- Whether Lodi's CPCN allows interconnection with a Calpine Entity;
- Whether any Calpine Entity has dedicated the gas pipeline(s) identified in the complaint to public use, rendering any such Entity a public utility;
- If any Calpine Entity is a public utility, what course of action the Commission should take;
- Whether any Calpine Entity unlawfully bypassed PG&E's system and failed to pay applicable tariff rates to the utility;
- Whether Lodi was required to seek review under the California Environmental Quality Act (CEQA) prior to constructing or allowing construction of portions of or appurtenances to the natural gas pipelines identified in the complaint;
- Whether the Lodi/Calpine interconnection(s) are authorized by the Commission as permissible under Pub. Util. Code § 1001;
- A detailed calculation of any reparations claimed;
- If reparations are awarded, how they should be divided between ratepayers and shareholders;
- Whether applicable statutes of limitations bar any portion of the claimed reparations under the facts of this case; and
- Any issue the assigned ALJ or assigned Commissioner later deems necessary to resolution of the case.

Parties generally should limit their testimony at evidentiary hearing to matters involving disputed issues of fact. Testimony that presents solely legal or policy argument may be stricken. Parties will have an opportunity to address matters of law and policy in briefs.

This proceeding is not focused on the actions of parties other than Lodi and the Calpine Entities. Nor is it focused on the defendants' future plans, but rather on the actions in which they are presently engaged or actions in which they engaged in the past.

Discovery

Any discovery disputes that the parties cannot resolve between themselves, after good faith efforts to meet and confer, may be raised by written motion in accordance with Rule 45 of the Commission's Rules of Practice and Procedure and with Commission Resolution ALJ-164, or such other manner as the presiding officer may order. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes.

All responses to data requests (including objections, substantive responses and documents) shall be served within 20 calendar days of service of data requests. Data requests and data request responses shall be served by hand, e-mail or facsimile so that the recipient receives them the day they are issued.

Parties shall serve (by hand, e-mail or facsimile) a privilege log (if applicable) pertaining to their data responses no later than 5 calendar days after serving the data request responses. The privilege log shall contain the date, sender(s) of the document, recipient(s) of the document, and a description of the subject matter of the document. Parties should agree on the form of privilege log in advance.

Schedule

The schedule for this proceeding is as follows:

January 15, 2004	All parties serve prepared direct testimony, with e-mail and hard copy to ALJ
February 12, 2004	All parties serve prepared reply

	testimony, with e-mail and hard copy to ALJ
February 17, 18, 19, 20, 23, 24, 25, 2004 10:00 a.m. to 4:00 p.m.	Evidentiary Hearing, Commission Courtroom, 505 Van Ness Avenue, San Francisco, CA 94102
Date to be set at Evidentiary Hearing	Concurrent initial briefs filed
Date to be set at Evidentiary Hearing	Concurrent reply briefs filed; case submitted

The briefing schedule will be set at the evidentiary hearing and, as indicated above, the planned submission date is tied to the date parties file concurrent reply briefs, as are all subsequent, statutory dates. It is our goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings and this schedule meets that goal. At this time, we foresee no extraordinary circumstances that would warrant an extension of the schedule. If parties find that such extraordinary circumstances arise, they shall file a motion seeking extension of the 12-month deadline for resolution of adjudicatory proceedings and state with particularity the circumstances warranting such extension.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer.

Assignment of Presiding Officer

ALJ Sarah R. Thomas will be the presiding officer.

***Ex Parte* Rules**

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Hearing Preparation

Parties shall use the same outline for opening and responsive briefs. Parties should seek to agree on that outline. Disputes may be presented to ALJ Thomas.

Parties are encouraged to coordinate cross-examination. Cross-examination will be limited to prevent duplication, if necessary.

Parties shall comply with the Hearing Ground Rules set forth in Appendix A hereto.

Service List

The official service list is now on the Commission's web page at http://www.cpuc.ca.gov/published/service_lists/C0307031_55587.htm. Parties should confirm that the information on the service list and the comma-delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list and the ALJ.

Parties shall serve hard copies of all briefs, testimony and other documents furnished to the Commission on all parties listed on the service list, including those identified as "State Service." Parties are not required to serve hard copies of such documents on those listed under "Information Only," but individuals or entities on the "Information Only" list that have provided an e-mail address shall be served electronically with all such documents. The e-mail addresses are listed on the Commission's website under "Case Info" in the "comma delimited file" at http://www.cpuc.ca.gov/published/service_lists/C0307031_55587.htm. Parties

shall copy the assigned ALJ on any pleadings or other documents (save discovery) by e-mail at srt@cpuc.ca.gov.

For documents that must be filed, the parties may serve documents by e-mail on the due date and file them the next business day. Parties shall attach this e-mail message to any such documents when filing them so the Docket Office knows of this order.

Commission's Public Advisor

Anyone who needs assistance with participation in this proceeding should make use of the resources on the Commission's website, www.cpuc.ca.gov, or should contact our Public Advisor's Office, which is available to help parties understand how to participate in a proceeding, how to file a pleading, and to answer other questions about Commission procedure. Parties may reach the Northern California office at 415-703-2074, 1-866-849-8390 or public.advisor@cpuc.ca.gov, and the Southern California office at 1-866-849-8391 or public.advisor.la@cpuc.ca.gov.

Duke Energy Petition to Intervene

We grant the petition of Duke Energy North America to intervene.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The discovery rules for this proceeding are as set forth herein.
3. The schedule for this proceeding is set forth herein.
4. This ruling confirms that this proceeding is adjudication scheduled for hearing.
5. The presiding officer will be Administrative Law Judge Sarah R. Thomas.
6. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

7. Prior to the distribution of prepared testimony, the parties shall meet and confer, in good faith, to explore informal settlement of this case.

8. Parties shall use a common outline for briefs.

9. Parties shall comply with the Hearing Ground Rules set forth in Appendix A hereto and the hearing preparation guidelines set forth in the body of this ruling.

10. Parties shall use the official service list available on the Commission's website at

http://www.cpuc.ca.gov/published/service_lists/C0307031_55587.htm.

11. Parties shall serve hard copies of all briefs, testimony and other documents furnished to the Commission on all parties listed on the service list, including those identified as "State Service." Parties are not required to serve hard copies of such documents on those listed under "Information Only," but individuals or entities on the "Information Only" list that have provided an e-mail address shall be served electronically with all such documents. The e-mail addresses are listed on the Commission's website under "Case Info" in the "comma delimited file" at http://www.cpuc.ca.gov/published/service_lists/C0307031_55587.htm. Parties shall copy the assigned ALJ on any pleadings or other documents (save discovery) by e-mail at srt@cpuc.ca.gov.

12. The petition of Duke Energy North America to intervene in this proceeding is granted.

Dated October 24, 2003, at San Francisco, California.

/s/ Sarah R. Thomas
Sarah R. Thomas
Administrative Law Judge

/s/ Geoffrey Brown
Geoffrey Brown
Assigned Commissioner

APPENDIX A
Hearing Room Ground Rules
ALJ Sarah Thomas

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room.
3. The lower right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the lower right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
4. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
5. Corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
8. Parties should agree on an exhibit numbering scheme in advance of hearing. One party may use exhibits 1-100, the next party may use 101-200, and so on. All exhibits shall be pre-marked with their number and the name of the sponsoring party.
9. Confidential exhibits should bear the appropriate exhibit number and be followed by the letter "C." A redacted copy of such an exhibit shall also be provided for the public record. Thus, the confidential version of Exhibit 1 will be marked Exhibit 1-C, and the redacted (public) version of the document will be marked Exhibit 1.
10. During the hearing, the ALJ may ask one party to create a running exhibit list (with designation of the sponsoring party, the name of the document, whether exhibits are in evidence, and the date on which they were identified and received in evidence) and furnish it to the ALJ and all other parties.
11. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Granting Petition to Intervene on all parties of record in this proceeding or their attorneys of record.

Dated October 24, 2003, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.